



INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
SAINT MARY-OF-THE-WOODS
COLLEGE



GARY & KATHERINE HOESMAN v. DANIEL SHEFFLER, ET AL.

Appeal from:
Sullivan Circuit Court,
The Honorable P.J. Pierson,
Judge

Oral Argument:
Tuesday, April 15, 2008
10:30—11:30 a.m.
30 minutes each side

CIVIL LAW

- 1) Were certain transfers of property and grants of **security** fraudulent transfers?
- 2) Is the property transferred subject to a **lien** acquired pursuant to a judgment against the transferor?
- 3) Are certain issues properly before this court?
- 4) Did the trial court abuse its discretion in denying the appellants' **motions to amend** their complaint and their **motions to consolidate** this suit with a prior related suit?

Facts and Procedural History

Ann Klapper died in 1992, leaving a **trust** to which Julia Johnson Sheffler was appointed **trustee** in 1997. While acting as trustee, Julia **converted** funds from the Trust for her own personal use. Julia's acts were discovered in 2003, and Julia resigned as trustee in 2004. The Appellants, the trusts' beneficiaries, filed a petition requesting relief. At some point, Julia obtained \$300,000 from her parents, William and Constance Johnson, and made three deposits, totaling approximately \$340,000, into the trust.

In a separate case, a trial court determined that Julia converted at least \$349,000 from the trust. It issued a judgment against Julia and in favor of the Appellants in the amount of \$288,144.95. Although Julia had deposited close to the amount that she had converted, the Trust was still damaged due to the lack of interest paid on these funds, the cost of

discovering the conversions, and other miscellaneous costs caused by Julia's actions.

On March 15, 2004, Julia and her husband, Daniel, executed a contract under which they agreed to pay Constance, as trustee of trusts established by her and her now deceased husband, \$300,000, plus 6% interest, in annual installments of roughly \$30,000. On that same day, Daniel and Julia granted Julia's parents a **security interest** in several of their vehicles and a mortgage on their residence. Within the next year, Julia transferred her shares of stock in a **closely held corporation**, owned by her family, to Constance.

On April 12, 2005, the Appellants filed the instant suit against Julia and Daniel, alleging that Julia had damaged them and that Daniel either should have known of Julia's actions or participated in and realized the benefit of Julia's actions. The Appellants subsequently moved, and were granted permission,

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to add Constance as a party, and alleged that Constance had received fraudulent transfers from Julia and Daniel. The Appellants filed motions for leave to file second and third amended complaints, in which they were attempting to join additional parties. The Appellants also filed two motions to consolidate the current action with the previous action in which it was determined that Julia converted funds from the trust.

Constance filed a motion to dismiss the amended complaint against her. This motion was later converted to a motion for **summary judgment**. On May 3, 2007, the trial court issued an order granting Constance's motion for summary judgment and denying the Appellants' motions to file second and third amended complaints and their motion to consolidate.

The Appellants subsequently sought leave to certify these rulings as either **final judgments** or appealable **interlocutory orders**. The trial court issued an order stating that its "Order and Summary Judgment . . . granting Constance Johnson's Motion to Dismiss / Motion for Summary Judgment is now declared a 'final judgment' as to the issues of fact and law addressed in that Order and Summary Judgment." The Appellants now appeal the trial court's grant of summary judgment and its denial of their motions for leave to file amended complaints and to consolidate.

Parties' Arguments

Issue 1: Fraudulent Transfers

Under Indiana's Fraudulent Transfers Act, a creditor may avoid certain transfers made by a debtor if the debtor makes the transfer in an attempt to hinder, delay, or defraud a creditor. The Appellants argue that a question of fact remains as to whether Julia acted with this intent when she transferred her stock and granted a security

agreement to her parents. Constance argues that the evidence demonstrates that there was no such intent, as the money that she and her husband gave Julia was deposited in the Trust. Constance argues that because she gave Julia more money than the stock or property governed by the security agreement are worth, these transfers did not harm the Trust.

The Appellants argue that these transfers harmed them, as Julia was left with no unencumbered property to satisfy the judgment.

Issue 2: Prior Lien

Under Indiana statute, when a trustee converts trust funds, and the funds cannot be traced, the trust's beneficiaries obtain a lien against the trustee's individual property. The Appellants argue that they hold a lien over the stock that Julia transferred to her parents and the property identified in the security agreement, and that this lien is superior to any interest that Constance has in this property.

Issue 3: Right to Appeal Trial Court Orders

Decisions made by a trial court are either final judgments or interlocutory orders. A party may appeal a final judgment. However, unless a judgment is final as to all parties and issues (not the case here), the trial court must issue an order indicating that the prior decision is final and appealable. Similarly, if an order is interlocutory, a party must receive permission from the trial court in order to appeal it to this court. Daniel argues that the trial court's rulings on the Appellants' motions for leave to amend their complaints and to consolidate are not final judgments and that the Appellants have not received permission from the

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trial court to appeal them as interlocutory orders. The Appellants argue that the trial court declared these orders to be final and appealable.

Issue 4: Trial Court's denial of Motions for Leave to Amend Complaints and to Consolidate

The Appellants argue that the trial court **abused its discretion** in denying their motions for leave to amend the complaints

and to consolidate. If this court determines that these issues are properly before it, this court will have to determine if these decisions were an abuse of discretion. In making this determination, this court considers many factors surrounding the reasons for the motions, and any resulting prejudice to the party opposing the motion.

GLOSSARY OF TERMS

Abuse of Discretion – Appellate courts grant trial courts discretion to make certain rulings. A trial court is said to have abused its discretion if its decision is against the logic and facts of the circumstances before it.

Convert – To wrongfully use another's property and deprive the owner of the use and possession of that property.

Closely Held Corporation – A corporation whose stock is not traded on the open market and is held by only a few shareholders (typically family members).

Final Judgment – A judgment that disposes of all claims as to all parties and that may be appealed to a higher court.

Interlocutory Order – An order rendered by a trial court that is not a final order.
Lien – A legal right or interest that a creditor has in another's property.

Motion to Amend Complaint – A motion filed in the trial court asking permission to add something (usually a party or a claim) to a complaint.

Motion to Consolidate – A motion filed in the trial court asking permission to combine two or more actions involving identical or similar parties and issues.

Security – Collateral pledged to guarantee the fulfillment of an obligation (generally the repayment of a loan).

Summary Judgment – A judgment granted on a claim where there is no genuine issue of material fact and where the moving party can prevail as a matter of law. This procedure allows for efficient disposition of some claims by avoiding a full-blown trial.

Trust – A property interest held by one person at the request of another for the benefit of a third party. A party seeking to provide for younger family members will often set up a trust instead of giving money directly to those family members.

Trustee – The party who has legal title to the trust property, holds it for the benefit of another, and has a duty to protect the trust property for that third party.

TODAY'S PANEL OF JUDGES

Hon. Patricia Riley (Jasper County), Presiding

- Judge of the Court of Appeals since January 1994

Patricia A. Riley, currently the presiding judge for the Court of Appeals' Fourth District, was named to the Indiana Court of Appeals by Governor Evan Bayh in January of 1994.

A native of Rensselaer, Judge Riley earned her bachelor's degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974.

Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993.

Judge Riley is a former associate professor at St. Joseph's College in Rensselaer and is currently an adjunct professor of law at the Indiana University School of Law—Indianapolis.

Judge Riley's legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA's Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System.

Judge Riley is the former chair of the Appellate Practice Section of the American Bar Association, and a member of the ABA's Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges.

Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006.

"Appeals on Wheels"

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

This is the Court of Appeals' 210th case "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. James S. Kirsch (Marion County)

- Judge of the Court of Appeals since March 1994

James S. Kirsch was appointed to the Court of Appeals in March 1994 and served as Chief Judge from March 1, 2004 to February 28, 2007. A native of Indianapolis, Judge Kirsch is a graduate of the Indiana University School of Law at Indianapolis (J.D., cum laude, 1974) and Butler University (B.A. with honors, 1968).

Judge Kirsch served as Judge of the Marion Superior Court from 1988 to 1994 and as presiding judge of the court in 1992. From 1974 to 1988, he practiced law with the firm of Kroger, Gardis & Regas in Indianapolis in the areas of commercial and business litigation and served as managing partner of the firm. Since 1990, he has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University.

Judge Kirsch is a past-president of the Indianapolis Bar Association and of the Indianapolis Bar Foundation and is a former member of the Board of Visitors of the Indiana University School of Law-Indianapolis. He is a past-president of the United Way/

Community Service Council Board of Directors and a current or former member of the Board of Directors of the United Way of Central Indiana, of the Board of Associates of Rose Hulman Institute of Technology, and of the Boards of Directors of the Goodwill Industries Foundation of Central Indiana, Community Centers of Indianapolis, the Indianapolis Urban League, the Legal Aid Society of Indianapolis, and the Stanley K. Lacy Leadership Association. He is a Fellow of the Indiana State Bar Foundation and of the Indianapolis Bar Foundation.

Judge Kirsch is a frequent speaker and lecturer and has served on the faculty of more than 200 continuing legal education programs. He has been named a Sagamore of the Wabash by four different governors.

Judge Kirsch and his wife have two children. He was retained on the Court in 1996 and 2006.

The 15 judges of the Indiana Court of Appeals issue more than 2,800 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES

Hon. Margret G. Robb (Tippecanoe County)

- Judge of the Court of Appeals since July 1998



Margret G. Robb was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis.

Prior to joining the Court, Judge Robb was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges. Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, is married to a professor at Purdue. Their son, a graduate of the United States Naval Academy, is on active duty in the United States Navy.

ATTORNEYS FOR THE PARTIES

For Appellants, Allen Hazelrigg, Trustee of the Ann Klapper Testamentary Trust and Earl Hoesman, Natural Guardian of Katherine Hoesman and Gary Hoesman:

**Arnold H. Brames
Brames & Oldham
Terre Haute**



Born in Jasper, Indiana on April 12, 1943, **Arnold Brames** graduated from Indiana State University in 1965 and Indiana University-Indianapolis Law School in 1970 and was admitted to practice law in Indiana. Mr. Brames is also admitted to practice before the United States District Court for the Southern District of Indiana, the United States Court of Appeals for the 7th Circuit and the United States Supreme Court.

Mr. Brames' memberships include the Indiana State Bar Association where he was formerly the 7th District Council Member and a past Chairman of the Corporation, Banking and Business Law Section. Mr. Brames also served as the delegate of the Vigo County Bar Association to the Indiana Bar Association.

Mr. Brames' practice involves probate and trust administration and litigation, estate planning, real estate, corporate and banking law matters. In his estate planning work, he has vast experience in wills and trusts, estate administration, gift and estate taxation, probate litigation, business organizations and transactions and federal and state estate and inheritance tax planning. Mr. Brames regularly prepares wills and trust documents, supervises the administration of estates and trusts, represents various

parties in guardianship and other contested matters, and provides gift tax and estate planning advice to professionals and business owners in business succession.

Mr. Brames also advises and represents existing businesses regarding choice of entity issues and purchase and sales of assets and/or stock, and prepares buy-sell agreements, employment agreements, and business contracts.

In 37 years of law practice in Terre Haute, Mr. Brames has devoted a substantial portion of his practice to the representation of numerous financial institutions in Terre Haute and West Central Indiana, including Fifth Third Bank for the Terre Haute area and numerous merged predecessors. He has represented numerous West Central Indiana mid-size financial institutions on commercial matters and state and federal regulatory compliance matters affecting financial institutions.

Mr. Brames presently serves as Chairperson of the Finance Committee of St. Benedict Catholic Church in Terre Haute and previously served as Chairman of its Stewardship Committee.

ATTORNEYS FOR THE PARTIES

For Appellee, Daniel Sheffler:

Jeffrey A. Lind

**Fleschner, Stark, Tanoos & Newlin
Terre Haute**

Jeffrey A. Lind, an attorney with Fleschner, Stark, Tanoos & Newlin in Terre Haute, was born in Indianapolis on June 20, 1963. He received a B.A. from Indiana University in Bloomington in 1985 and his J.D. from the law school of De Paul University in 1988. He spent his third year of law school at Indiana University-Indianapolis as a visiting student. Mr. Lind was admitted to the bar in Indiana in 1988; he is also admitted to practice before U.S. District Court for the Northern and Southern Districts of Indiana.

Mr. Lind has been a member of the Indiana Supreme Court Commission for Continuing Legal Education since 2006. He served on the Board of Directors of the Indiana Continuing Education Forum from 1995 to 1996. From 1996 to 1999, he was Vice-Chair of the Indiana Supreme Court's Interest on Lawyers Trust Accounts Technical Committee.

Mr. Lind was President of the Indiana Bar Foundation from 2004 to 2005. He is a member of the Terre Haute Bar Association, serving as President from 2001 to 2002, and the American Bar Association, where he served in the House of Delegates from 1995 to 1998. His involvement with the Indiana State Bar Association, however, is most extensive, and includes service in the House of Delegates, 1992-present (Chair from 2005-2006); Board of Governors, 1993-1994, 1998-2000, and 2004-2006; Chairman, Young Lawyers Section, 1993-1994; Chairman, Legal Education and Admission to the Bar Committee, 1995-1998; Chairman, Probate, Trust, & Real Property Section, 2001-2002; Council Member, Professional Legal Education, Admission and Development (PLEADS) from its formation to present; and the Chair of the Legal Education Conclave Committee from 2002-2003.



For Appellee, Constance Pleasant Johnson:

James O. McDonald

**Everett, Everett & McDonald
Terre Haute**

James O. McDonald was born in Clinton, Indiana on February 18, 1947. He received his undergraduate degree from Indiana State University in 1969 and his law degree from Indiana University School of Law-Indianapolis in 1972. He was a member of Phi Delta Phi and admitted to bar in 1972.

He served as a judicial law clerk with the Indiana Court of Appeals from 1970 to 1972. From 1974 to 1979, Mr. McDonald was an attorney with the Vigo County School System. He worked for the Terre Haute Housing Authority from 1980 to 1981.

Mr. McDonald is certified in Civil Trial Advocacy by the National Board of Trial Advocacy. In 2005, he was recognized as Lawyer of the Year by the Indiana Trial Lawyers Association (ITLA).

Mr. McDonald is a member of the Terre Haute Bar Association, serving as President from 2000 to 2001. He is also a member of the Indiana State Bar Association, the Indiana Trial Lawyers Association, and the Association of Trial Lawyers of America. His practice focuses primarily in the areas of civil trial law, construction law, probate law, product liability and class action.